

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.175 of 2018

In
Civil Writ Jurisdiction Case No.2209 of 2011

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Niranjan Kumar Dutta Son of Late Mahendra Prasad Dutta, Resident of
Village-Dalia, P.S. Bounsi, District Banka.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Water Resources Department Govt. of Bihar Patna.
3. The Deputy Secretary, Water Resources Department, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shailesh Kumar Sharma, Advocate
For the Respondent/s	:	Mr. Anjani Kumar -AAG-4
		Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 30-04-2019

The present appeal has been preferred against the judgment dated 03.01.2018 passed in C.W.J.C. No. 2209 of 2011, whereby and whereunder the learned Single Judge has declined to entertain the writ application which was filed by the writ petitioner for quashing of the notification as contained in Memo No. 1467 dated 09.12.2009 by which the appellant-petitioner has been inflicted punishment of censure for the year 2004-05 and also for holding of two increments with non-cumulative effect. The appellant-petitioner had further sought to



quash the appellate order as contained in Letter No. 1465 dated 28.09.2010 issued under the signature of the Deputy Secretary, Water Resources Department, State of Bihar who has confirmed the punishment passed on 09.12.2009.

2. The facts leading rise to the present writ application can be briefly enumerated as follows:-

(a) The appellant-petitioner was appointed as Assistant Engineer in the Water Resources Department, State of Bihar in the year 1979 and, was promoted to the post of Executive Engineer on current charge basis vide Notification No. 4750 dated 29.06.2002 under the Water Resources Department and his services were made available to the Flood Control Division, Naugachhia.

(b) That while the petitioner was posted as Executive Engineer, Current Charge at Flood Control Division, Naugachhia, a proceeding was initiated against the appellant-petitioner under Rule 55(a) of the Civil Services (Classification, Control



and Appeal) Rules, 1956 vide charges leveled against the appellant-petitioner vide Letter No. 34 dated 03.02.2005.

- (c) The charge leveled against the appellant-petitioner was that he had not relieved the transferred Junior Engineer for about four (4) months. In response to the aforementioned charge, the appellant-petitioner submitted his explanation vide his Letter No. 163 dated 04.03.2005, in which, he clearly stated that the transfer order dated 11.02.2004 of Junior Engineer, namely Harendra Narain as contained in Memo No. 546 was received in his office on 23.02.2004. Accordingly, the appellant-petitioner vide his Letter No. 239 dated 27.02.2004 directed the concerned S.D.O. Flood Control Sub Division No. 1, Naugachhia Camp Bihpur to relieve the transferred Junior Engineer. In his reply, the appellant-petitioner had further stated that the concerned S.D.O. vide his Letter



No. 16 dated 01.04.2004, Letter No. 61 dated 25.04.2004, Letter No. 64 dated 17.05.2004, Letter No. 60 dated 22.05.2004 and finally by Letter No. 69 dated 15.06.2004 directed said Harendra Narain, Junior Engineer to handover charge to Subhash Chandra Singh, Junior Engineer so that he may be relieved. However, Harendra Narain did not handover charge.

(d) As such, the appellant-petitioner issued Letter No. 610 dated 28.05.2004 and Letter No. 731 dated 15.06.2004 to relieve the transferred Junior Engineer, in which, it was also stated by the appellant-petitioner that in case, the said Harendra Narain had not handed over charge, then his salary for the month of June, 2004 would be withheld and ultimately, the salary of the said Harendra Narain was for the month of June, 2004 was withheld. It was reiterated by the appellant-petitioner vide his Letter



No. 610 dated 28.05.2004 that he had also directed the transferred Junior Engineer to handover charge to Subhash Chandr Singh, Junior Engineer.

(e) The concerned Sub Divisional Officer informed the appellant-petitioner that Harendra Narain was not handing over charge even after several directions and as such, could not be relieved and, therefore, the petitioner vide his Letter No. 773 dated 26.06.2004 himself directed the Transferred Junior Engineer to handover charge immediately or he would be relieved unilaterally at the divisional level itself and in the event of any difficulty being caused, the same will be his own disadvantage. Another Letter No. 783 dated 28.06.2004 was issued by the appellant-petitioner, by which the concerned S.D.O. was directed to relieve the transferred Junior Engineer after handing over charge but in the event of his



own handing over charge, he must be relieved on 30.06.2004.

(f) Ultimately, the concerned S.D.O. vide his Letter No. 79 dated 30.06.2004 informed that the transferred Junior Engineer has been relieved vide his letter dated 03.07.2004.

(g) In the letter/explanation furnished by the appellant-petitioner to the explanation asked from him with regard to relieving of the transferred Junior Engineer, the appellant-petitioner averred that he was interested in relieving the transferred Junior Engineer after handing over charge because, in case the handing over charge was not affected by the Junior Engineer, a lot of trouble would be occasioned in future as it leads to damage in-accountability of government's material and as a consequence thereof, in many cases, it has been found that financial loss is also occasioned. In certain cases, the



transferred Junior Engineer, sometimes was also required to hand over charge in presence of Magistrate, who prepared an inventory after obtaining permission from the higher official. Such actions of non handing over charge on transfer, often led to financial loss and mental trauma to the concerned officials and adverse affects on the departmental works.

- (h) Another supplementary show cause was issued by the Water Resources Department to the petitioner vide their Letter No. 716 dated 08.07.2006 (Annexure-8) calling upon the petitioner to show cause. In the said show cause, the petitioner was asked to answer the charge that since there has been a delay of four months in the handing over charge of Harendra Narain, Junior Engineer, the official records must not have been maintained/updated and had the records been up-to-date, then it would not have taken four months for the said



Harendra Narain to hand over charge. As such, the appellant-petitioner was called upon to answer this charge also, which was duly responded by him vide his Letter No. 719 dated 21.07.2006 (Annexure-9). In the said reply, the appellant-petitioner stated that so far as the materials were concerned, there was no anomaly and only some coal, drums and bricks were in the charge of the Junior Engineer which were found to be in order. The only reason for the Junior Engineer not handing over charge was his own delaying tendency though he had been given several reminders by the S.D.O. and ultimately, his salary had been also stopped.

(i) However, the Water Resources Department vide his Letter No. 1081 dated 26.10.2006 issued a show cause alleging that there is a contradiction in his second show cause which may be further explained. The petitioner again painstakingly answered the



third show cause vide Letter No. 1125 dated 24.12.2006 explaining clearly that it was nothing but the delaying tendency of the transferred Junior Engineer which came to be the reason for delay in handing over the charges for which his salary had been withheld. It was also categorically asserted by the petitioner in his reply (Annexure-11) that after taking the necessary steps by himself as well as by the S.D.O., the petitioner had taken the ultimate step by withholding the salary of Junior Engineer, thereby compelling him to hand over the charge and relieving him of the same. In the said reply, the appellant-petitioner had specifically stated that the only reason why the delay had been occasioned, was because the appellant-petitioner wanted to ensure that under all circumstances, the Junior Engineer himself handed over charge before being relieved so that in future there may be no



complications and thus, after having such explanations, the appellant-petitioner had prayed for a sympathetic consideration of his explanation as there had been no violation by the appellant-petitioner of any departmental instructions nor had been indulged in any act of violation of departmental instruction.

(j) However, the respondents sat tight over the matter of the appellant-petitioner and ultimately vide Memo no. 1467 dated 09.12.2009, i.e after more than 2 years, the appellant-petitioner was inflicted with the punishment of censure for the year 2004-05 and also of withholding of two increments with non-cumulative effect.

(k) Being aggrieved by the aforesaid order, the appellant-petitioner preferred an Appeal against the punishment order before the Water Resources Department, Government of Bihar, which was dismissed vide Letter No. 1465 dated



28.09.2010, affirming the punishment order passed against the appellant-petitioner in departmental notification no. 1467 dated 09.12.2009 without assigning any reasons which is evident from a bare perusal of the order dated 28.09.2010 (Annexure-14).

(l) Aggrieved by the aforementioned order passed by the authorities and faced to the situation wherein the appellant-petitioner was likely to be reverted back from the post of Executive Engineer, Current Charge to the post of Assistant Engineer, the appellant-petitioner preferred a writ application contending that if he may be permitted to work as Executive Engineer, Current Charge, as he was likely to superannuate in the month of July, 2011.

3. Learned counsel for the appellant-petitioner submitted that on account of the aforementioned punishment order, the petitioner's promotion to the regular post of Executive Engineer was also kept in abeyance due to the



pendency of the departmental proceedings. Thereafter, due to the order of punishment though several similarly situated Junior Engineers had been promoted but his case was not considered.

4. Learned Single Judge after hearing the parties and on perusal of the counter affidavit filed on behalf of the respondent no. 2 taking note of the fact that there was a contradiction in the two explanations offered by the appellant-petitioner dismissed the writ application by noting that the appellant-petitioner had tried to shift the blame completely upon the shoulders of the Junior Engineers who had shown slackness in handing over charge. The learned Single Judge also recorded finding to this effect that the view taken by the Disciplinary Authority could not be ignored in view of different stands taken by the appellant-petitioner in his letters marked as Annexure-3 series. It was thus, observed that the Disciplinary Authority had given finding that a contradictory stance had been taken by the appellant-petitioner in his successive explanation before the Disciplinary Authority and, therefore, the reply of the appellant-petitioner was rightly rejected holding him to be responsible for the delay in handing over charge. The dispute with regard to the facts that the records were not updated and, the materials in possession of the



concerned Junior Engineer, were not presumed to be the reason or hindrance for not handing over charge. The learned Single Judge then proceeded to uphold the order of punishment as in its opinion the Court would not sit in Appeal in the case of minor punishment.

5. We have heard learned counsel for the parties and perused the materials on record.

6. The challenge to the order of the learned Single Judge has been placed stating that the learned Single Judge had failed to appreciate that the order of punishment did not disclose what contradictions in the statement of the appellant-petitioner had been noticed and that there was no contradiction in the consecutive replies filed by the appellant-petitioner. Learned counsel further contended that the learned Single Judge has failed to appreciate that the appellant-petitioner had in a *bona fide* manner tried to relieve the Junior Engineer as it was always in the interest of the department that the Junior Engineer should handover full charge so as to prevent the future complications and any inference drawn to the contrary was based on no evidence.

7. Learned counsel further contended that this apart, the learned Single Judge had failed to appreciate that



there was no finding to the effect that the record had not been maintained/updated and the anxiety expressed by the Sub Divisional Officer, Birpur with regard to handing over charge was not unfounded. Learned counsel for the appellant-petitioner further contended that the efforts of the appellant-petitioner to relieve the recalcitrant Junior Engineer after proper handing over charge, did not necessarily indicate that the records were in disarray and ought to have been appreciated and, therefore, the finding arrived at that the appellant-petitioner was guilty of violation of departmental instructions and rules, is wholly without any basis. Consequently, the punishment order inflicted upon the appellant-petitioner was, fit to be set aside.

8. We have perused in depth the successive show cause notices issued by the Water Resources Department. The first notice relates only to non-handing over charge but the charges as against the appellant-petitioner appears to have been supplemented in the following charge issued to him. A bare perusal of Annexure -2 dated 03.02.2005 clearly indicates that the only charge leveled against the appellant-petitioner was that he had not relieved the transferred Junior Engineer for about four months. However, in the second charge contained in Letter



No. 716 dated 08.07.2006 (Annexure-8), the further charge has been levelled stating that since four months had been spent in handing over charge, the same clearly indicates that the records were not updated. The reply submitted to the second charge clearly indicated that the mere fact that the charge had been handed over by the Junior Engineer after four months, did not indicate that the records were not in order was a mere presumption as the appellant-petitioner had taken necessary steps to relieve the Junior Engineer and ultimately, had resorted to the stringent measure of withholding his salary which was indicative of the *bona fides* of the petitioner. A perusal of the same clearly indicates that the appellant-petitioner was trying to establish that there had been no laches on his part but the Disciplinary Authority vide letter dated 09.12.2009 has come to the finding that the appellant-petitioner was responsible for not handing over charge and as such, had openly violated the departmental instructions.

9. We, however, do not find that there was any reason for the authorities to give such findings as the appellant petitioner in his consecutive explanations has always averred that he had been instructing the S.D.O. to take over charge forthwith from the Junior Engineer and having failed to get



response of an effective performance of his instructions had ultimately, resorted to the stoppage of his salary for the month of June before finally taking over charge from him. Thus, the deductions arrived at by the Disciplinary Authority which also finds support in the order of the learned Single Judge appears to be hypothetical and cannot form the basis of any order of punishment.

10. We are also conscious of the provisions of law being the Civil Services (Classification, Control and Appeal) Rules, 1930 wherein it has been envisaged that while passing an order under this Rule, it is of paramount importance that the authority passing the order himself should give a conscious consideration to the representation filed by the employee after due application of mind as any punishment which should follow would be marring future prospects of the employee. A mechanical approach based on conjectures and surmises should be avoided and all considerations of the representation should be on an objective basis. This reasoning finds support in the case of **Md. Mahmudul Hasan vs. The State of Bihar & Ors** reported in **1997 (2) PLJR, 953**.

11. Paragraph – 8 of the aforesaid decision is extracted herein under:-



“In so far as the second point is concerned, this court is of the view that while passing an order under Rule 55-A of the said Rules, it is incumbent upon the authority concerned to consider the representation made by the employees and such consideration means a conscious application of mind and also a consideration of the explanation given by the employees in an objective basis. This point is, no doubt, concluded by a Division Bench judgment of this Court in the case of **Dr. Rabindra Nath Singh vs. The State of Bihar and others** reported in 1983 P.L.J.R. page 92. In paragraph 10 of the said judgment the learned Judges hold that as no reason has been assigned as to why the show cause reply is unsatisfactory, the same was quashed and the learned Judges held that giving reasons in support of the order which affects a persons is also the basic need of the principles of natural justice. In coming to the said conclusion in the case of **Dr. Rabindra Nath Singh (supra)** the learned Judges of the Division Bench have considered various authorities of the Supreme Court. This Court is in respectful agreement with the said judgment in **Dr. Rabindra Nath Singh (supra)** and holds that in the instant case also the impugned order suffers from the same infirmity inasmuch as the impugned order does not at all consider objectively



or otherwise the explanation given by the petitioner. Therefore, the impugned order has to be quashed and this Court does quash it as being wholly without jurisdiction.”

12. In view of such categorical submissions by the petitioner the finding arrived at by the Disciplinary Authority appears to be mechanical and based on no material and the punishment order which came as a consequence thereof is rather excessive and has caused prejudice to the petitioner inasmuch as he had been deprived of the increment for two consecutive years and further on account of the fact of “censure” inflicted on him, his promotional avenue also appears to have been scuttled, which in our opinion appears to be wholly unwarranted and calls for interference by this Court.

13. In the result, for the reasons aforementioned and in the interest of justice, we allow the present appeal and set aside the order dated 03.01.2018 passed in C.W.J.C. No. 2209 of 2011 by the learned Single Judge as also the orders dated 09.12.2009 as contained in Memo No. 1467 and also letter no. 1465 dated 28.09.2010 issued under the signature of the Deputy Secretary, Water Resources Department, Government of Bihar.

14. We accordingly direct that the department



shall take necessary steps in furtherance of the prayer of the appellant-petitioner with regard to the claim for promotion of the appellant-petitioner and pass appropriate orders in accordance with law.

15. The Appeal is allowed with the direction as stated above.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	30.04.2019
Transmission Date	

